

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2206 of 1982

with

CIVIL REVISION APPLICATION No 2228 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SHANGAR HUSAIN ESAQ

Versus

DINESHCHANDRA DHANJI

Appearance:

1. Civil Revision Application No. 2206 of 1982
MR BY MANKAD for Petitioner
MR SURESH M SHAH for Respondent No. 1
 2. Civil Revision ApplicationNo 2228 of 1982
NOTICE SERVED for Petitioner
MR SURESH M SHAH for Respondent No. 1
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/03/2000

ORAL JUDGEMENT

1. The applicant of Civil Revision Application No.2206/82 is the original defendant No.2 against whom as well as against the opponent No.2 - Shangar Jusab Abha, Respondent No.1 herein, had filed the suit being Civil Suit No.172/77 in the court of Civil Judge (Junior Division), Mandvi, for obtaining decree for possession on the ground of subletting as well as on the ground of arrears of rent. During the pendency of this revision application, the respondent No.2 herein, that is, Shangar Jusab Abha had died and his heirs are brought on the record. Learned advocate Mr.N.V.Anjaria, is appearing for the heirs of the said deceased - opponent No.2. So far as Civil Revision Application No.2228/82 is concerned, the same was filed by the original opponent No.2 of Civil Revision Application No.2206/82, that is, Shangar Jusab Abha. However, in the second revision application, heirs of the said deceased - Shangar Jusab Abha have not been brought on the record, but, however, since both the revision applications are arising out of the common order and since the heirs of the deceased-Shangar Jusab Abha have already been brought on the record in the first Civil Revision Application No.2206/82, both these revision applications are being disposed of by this common order.

2. The facts leading to both these civil revision applications are as under.

3. That the opponent No.1 herein - Dineshchandra Dhanji was the original plaintiff of Civil Suit No.172/77. The plaintiff had filed the suit on the ground that the plaintiff is the owner of the suit premises by virtue of the sale deed dated 14.12.1967 as having purchased the suit property from one Lakhmibai. The original defendant No.1 - Shangar Jusab Abha was the tenant of the suit premises and he had executed the rent note in favour of the plaintiff and said original defendant No.1 was also paying the rent to the present plaintiff. The defendant No.1, however, had filed the application to the Mamlatdar to the effect that the suit property, that is, vada is belonging to the Government and not to the present plaintiff. In that proceedings, it was decided by the Collector that the disputed property is belonging to the plaintiff and not to the Government. According to the plaintiff, the defendant No.1 has sublet the suit premises to the defendant No.2

(who is the applicant of Civil Revision Application No.2206/82). That the defendant No.1 has also not paid the rent from 14.12.1969. On the said ground, the plaintiff gave demand notice as required by Section 12(2) of the Rent Act to the defendant No.1 and the defendant No.1 having failed to comply with the same, ultimately, the suit for possession was filed against the defendant No.1, that is, head tenant as well as against the defendant No.2 who according to the plaintiff was the sub-tenant.

4. The defendant No.1 appeared in the suit and filed his written statement at Exh.12. It was contended by the defendant NO.1 that, he is not the tenant of the suit premises and denied that he has sublet the suit premises to the defendant No.2 It was contended that the defendant No.2 is in possession of the suit premises since long and running his motor garage there. According to the defendant No.1, he was subjected to the said suit wrongly by the plaintiff as he has nothing to do with the suit premises in any manner.

5. The defendant No.2 also appeared in the suit and gave reply at Exh.13. According to the defendant No.2, the plaintiff was not the landlord of the suit premises and that the sale deed in favour of the present plaintiff by the original owner of the property is illegal and without consideration. According to the defendant No.2, the suit property belonged to the Government and he is the owner of the super structure. According to the defendant No.2, he was not the sub-tenant, but he is the real tenant of the suit premises. According to him, the defendant No.1 had no right to execute any rent note, and if, any such rent note is executed, it is not binding to the defendant No.2.

6. The trial court framed necessary issues, and after recording the evidence and after hearing the arguments of both sides, came to the conclusion that, the defendant No.1 has sublet the suit premises to the defendant No.2 and that the defendant No.1 was in arrears of rent, accordingly the trial court decreed the suit for possession, and also for Rs.545/- which was the amount found due from the defendant No.1.

7. The aforesaid decree of the trial court was challenged by the defendant No.2 by way of appeal being Civil Regular Appeal No.167/79. The original defendant No.1 had also filed the appeal being Civil Regular Appeal No.168/79. Both the aforesaid appeals were heard together by the Assistant Judge, Bhuj-Kachchh. Learned

Appellate Judge dismissed both the appeals and confirmed the decree of the trial court. Against the aforesaid judgment of the appellate court, the original defendant No.2 has filed the revision application being Civil Revision Application No.2206/82 and so far as the original defendant No.1 is concerned, he has also filed the revision application being Civil Revision Application No.2228/82. As stated earlier, during the pendency of these revision applications, original defendant No.1 has expired and his heirs have already been brought on the record of the first Civil Revision Application No.2206/82 which is filed by the defendant No.2. However, no such application of heirs seems to have been filed so far as the second revision application is concerned. Since, the common question of law and facts arises and it is virtually the defendant No.2 who is merely concerned with the result of this litigation, I am deciding both the revision applications together by this common judgment. Even otherwise, heirs of the deceased defendant No.1 are already on record of the first revision application, and therefore, also since both the matters are to be heard together, second revision application cannot be said to have been abated for want of bringing the heirs on record.

8. So far as Civil Revision Application No.2206/82 is concerned, I have heard the learned advocate Mr.Mankad for the applicant - original defendant No.2. Mr.S.M.Shah is appearing for the original landlord, that is, opponent No.1 and Mr.N.V.Anjaria is appearing for the heirs of the opponent No.2, that is, defendant No.2 of the original suit. Mr.Anjaria supported the arguments of Mr.Mankad by stating that he is adopting the arguments of Mr.Mankad to the effect that the original defendant No.2 was the direct tenant and that the original defendant No.1 was not concerned in any manner with the property. So, real controversy which is required to be decided is between the original plaintiff and the original defendant No.2.

9. It is not in dispute that the present plaintiff had purchased the suit property from his earlier owner by registered sale deed dated 14.12.1967. The defendant No.1 was occupying the suit property even before the plaintiff purchased the same. However, after the said purchase, the defendant No.1 executed a fresh rent note in favour of the present plaintiff, but since the defendant had not paid the rent, he was subjected to the demand notice. Both the defendants had taken absolutely false dispute that the Government was the owner and that the sale deed in question in favour of the plaintiff was bogus and without consideration. In my view, it was not

open for the defendants to challenge the title of the landlord and the defendant No.1 having executed the rent note in favour of the present plaintiff, they are not entitled to challenge the title of the landlord. In the inquiry conducted by the Government, it was found that the suit property belonged to the predecessor in title of the plaintiff who had subsequently sold it to the present plaintiff.

10. The main question which requires consideration is, whether the defendant No.2 was the tenant in the suit property from the beginning or whether the defendant No.1 has sublet the suit premises to the defendant No.2. The defendant No.1 is the uncle of the defendant No.2 and his case from beginning is that he was not the tenant, but the defendant No.2 was the tenant of the suit property. At this stage, reference is required to be made to the rent note at Exh.20 which says that the defendant No.1 was occupying the premises even when the property was occupied by the predecessor in title of the plaintiff as the tenant. Not only that, after the suit property was purchased by the present plaintiff, a fresh rent note was executed by the defendant No.1 which is at Exh.22. Learned Appellate Judge has considered the said fact in detail in para 9 of his judgment. If, the defendant No.2 was the tenant of the suit property, there was no question for the defendant No.1 to execute the rent note in his individual capacity. It was found on appreciation of the evidence by the appellate court that the defendant No.1 was the tenant of the suit property, and there was a relationship of the landlord and the tenant between the plaintiff and the defendant No.1. It was found by the appellate court that the say of the defendant No.1 was absolutely false and contrary to the record and that he had denied his admitted signature on the Vakalatnama and written statement only in order to prove that he had not signed the rent note. Learned Appellate Judge has also considered the evidence of the Revenue Circle Inspector Hirji Vishanji who has stated that the defendant No.1 has signed in his presence. In that view of the matter, both the courts were right in coming to the conclusion that the defendant No.1 was the tenant of the suit premises.

11. It was argued by Mr.Y.S.Mankad, learned advocate for the petitioner - original defendant No.2 that, he was the direct tenant of the suit premises, and therefore, there was no question of subletting by the defendant No.1 to the defendant No.2. Learned Appellate Judge has considered this aspect in detail in paras 11 and 12 of the judgment. It is found that, simply because the defendant No.2 was found to be running the business in

the suit premises, it cannot be inferred that, he was the direct tenant of the plaintiff or of his predecessor in title. As a matter of fact, the rent note was executed by the defendant No.1 in his individual capacity in favour of the present plaintiff. In that view of the matter, this court while sitting in revision cannot disturb the findings of fact arrived at by the courts below to the effect that the defendant No.1 was the tenant of the suit premises. The aforesaid findings are based on appreciation of the evidence and the revisional court cannot reappraise the evidence and disturb the aforesaid findings of fact which are based on oral as well as documentary evidence. It is, therefore, not possible to accept the say of Mr.Y.S.Mankad to the effect that the defendant No.2 was the direct tenant of the plaintiff from the beginning.

12. Next question which is required to be considered is, whether the defendant No.1 has transferred or alienated or sublet the suit premises to the defendant No.2. It was argued by Mr.Mankad that, if the defendant No.2 is helping his uncle in the business and if, the uncle is also doing the business in the suit premises, it cannot be said that the defendant No.1 has sublet or transferred the suit premises to the defendant No.2. It cannot be said that there was parting of the possession by the defendant No.1 in favour of the defendant No.2. However, the defendant No.1 has clearly stated in his evidence as well as in his written statement that the defendant No.1 is not concerned with the suit premises in any manner, and that, the defendant No.2 is in exclusive possession so far as the suit premises is concerned. It is, therefore, clear that the defendant No.1 has left the suit premises and it was exclusively occupied by the defendant No.2. The aforesaid point has also been considered in detail in para 12 by the learned Appellate Judge. It is, therefore, clear that the defendant No.1 has assigned his interest in the suit property to the defendant No.2 and on the aforesaid fact, if both the courts have concurrently found that the defendant No.1 has transferred or alienated the suit premises to the defendant No.2, it is not possible for this court to substitute the said finding of fact by taking contrary view. Even otherwise, the aforesaid conclusion is arrived at by the courts below on proper interpretation of the documentary and oral evidence on record. In that view of the matter, I do not find any substance in the argument of Mr.Mankad, learned advocate for the applicant original defendant No.2. Similarly, I do not find any substance in the argument that the plaintiff having waited for a long time, is presumed to have waived his

right for filing the suit on the ground of subletting. The appellate court has considered the said point in para 13 of its judgment. It was found that, the landlord was not initially aware about the aforesaid parting of the possession by the defendant No.1 in favour of the defendant No.2. It cannot be said that the plaintiff had full knowledge about the aforesaid transfer and that, with the said knowledge he has waived his right to evict the sub-tenant or that he has accepted the aforesaid transfer of possession by the defendant No.1 in favour of the defendant No.2.

13. The defendant No.1 has not paid the arrears of rent inspite of the demand notice, and therefore, when the arrears of rent are not paid within one month from the receipt of the suit notice, the decree for possession on the said ground is required to be passed. It is also found that the defendant No.1 is not regularly depositing the rent in the court. In that view of the matter, the courts below were right in passing the decree for possession on the ground of arrears of rent also. In that view of the matter, there is no substance in both these revision applications and the same are required to be dismissed and are accordingly dismissed. Rule discharged in both Civil Revision Applications Nos.2206/82 and 2228/82 with no order as to costs.

14. At this stage, Mr.Mankad has requested for giving sometime to the applicant for vacating the suit premises. In the facts and circumstances of the case, the present applicant, that is, Shangar Husain Esaq is given time to vacate the suit premises upto 31/3/2001. The aforesaid time is given on the condition that the applicant shall file the undertaking before this court stating that he is in exclusive possession of the suit premises and that without obstructing or resisting in any manner he will hand over the vacant possession of the suit premises to the opponent No.1 herein on or before the aforesaid date. He should also pay the mesne profit regularly every month, till he vacates the suit premises. The aforesaid undertaking is to be filed in this court within a period of six weeks from today. If, the aforesaid undertaking is not filed within the stipulated time, or if, there is any breach of the aforesaid undertaking at any point of time, it will open for the opponent No.1 to execute the decree for possession forthwith.

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